

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 01-0354****Income Tax****For Tax Years 1996-1998**

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ISSUE**I. Adjusted Gross Income Tax—Unitary Status**

Authority: Container Corporation of America v. Franchise Tax Board, 463 U.S. 159 (1983)

Taxpayer protests its classification as a non-unitary business.

STATEMENT OF FACTS

Taxpayer is a fifty-percent (50%) partner in two partnerships which operate in the equipment leasing and asset based financial industry. The Indiana Department of Revenue ("Department") conducted an audit for the tax years involved and as a result issued proposed assessments. Taxpayer disagrees with these assessments. Further facts will be supplied as necessary.

I. Adjusted Gross Income Tax—Unitary Status**DISCUSSION**

Taxpayer protests the proposed assessments for adjusted gross income tax for the tax years at issue. The Department concluded that taxpayer was not in a unitary relationship with two partnerships it owned equally with a related corporate partner. Taxpayer disagrees and believes that it is in a unitary relationship with the partnerships.

The U.S. Supreme Court discussed unitary business in Container Corporation of America v. Franchise Tax Board, 463 U.S. 159 (1983). In that case, the Court explained a three-factor formula to determine unity. Factor one is functional integration, factor two is centralization of management and factor three is economies of scale. The Court explains:

The State Court of Appeals relied on a large number of factors in reaching its judgment that appellant and its foreign subsidiaries constituted a unitary business.

These included appellant's assistance to its subsidiaries in obtaining used and new equipment and in filling personnel needs that could not be met locally, the substantial role played by appellant in loaning funds to the subsidiaries and guaranteeing loans provided by others, the "considerable interplay between appellant and its foreign subsidiaries in the area of corporate expansion," 117 Cal. App. 3d, at 997, 173 Cal. Rptr., at 127, the "substantial" technical assistance provided by appellant to the subsidiaries, *id.* at 998-999, 173 Cal. Rptr., at 128, and the supervisory role played by appellant's officers in providing general guidance to the subsidiaries. In each of these respects, this case differs from *ASARCO* and *F.W. Woolworth*, and clearly comes closer than those cases did to presenting a "functionally integrated enterprise," *Mobil, supra*, at 440, which the State is entitled to tax as a single entity.

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Id., at 179.

In the instant case, taxpayer has provided insufficient documentation of functional integration. Taxpayer has not provided any evidence that it has employees, or expenses related to operating a functional business. Without operation of a functional business, it stands to reason that there could not be any functional integration with another business. Since taxpayer has failed to satisfy the first factor of unity as explained in Container Corporation, and all three must be satisfied to qualify as a unitary business, there is no need to address the remaining two factors.

Next, 45 IAC 3.1-1-153(c) explains:

If the corporate partner's activities do not constitute a unitary business under established standards, disregarding ownership requirements, the corporate partner's share of partnership income attributable to Indiana shall be determined as follows:

- (1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the partnership.
- (2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to apportionment.

Since taxpayer's activities do not constitute a unitary business under established standards, and since the partnership derives business income from sources within and without Indiana, 45 IAC 3.1-1-153(c)(1) provides that the three factor formula is appropriate to determine taxpayer's partnership income attributable to Indiana.

In its protest, taxpayer refers to several Financial Institutions Tax (FIT) regulations to support its claim that it is a unitary business. Since the tax at issue is Adjusted Gross Income Tax, FIT regulations are not relevant and will receive no further discussion. Taxpayer has provided

insufficient documentation to establish that it is part of a functionally integrated enterprise, which is necessary to qualify as a unitary business under Container Corporation.

FINDING

Taxpayer's protest is denied.

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